

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 97-0200 MVE  
MOTOR VEHICLE EXCISE TAX  
For The Tax Periods: 1992 through 1996**

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**ISSUES**

**I. Motor Vehicle Excise Tax – Imposition**

**Authority:** IC 9-18-2-1, IC 9-13-2-78, IC 6-8.1-5-1, IC 6-1.1-20.9-1, IC 6-1.1-20.9-3 (c).

The Taxpayer protests the imposition of the motor vehicle excise tax on their 1991 Cadillac.

**II. Tax Administration – Penalty and Interest**

**Authority:** IC 6-8.1-10-2.1, IC 6-8.1-1-10-1, 45 IAC 15-11-2(c).

The Taxpayer protests the imposition of the negligence penalty and interest.

**STATEMENT OF FACTS**

Taxpayers were assessed the Motor Vehicle Excise Tax on a 1991 Cadillac. Taxpayers lived and worked in Indiana for many years. After retirement, the Taxpayers purchased a home in Florida in 1988 but retained their Indiana home which they claimed a homestead mortgage credit. They registered to vote, obtained driver's licenses, registered their automobile, and paid sales tax for the purchase of the Cadillac in Florida. In May 1996, Taxpayers sold their Florida home and decided to return to Indiana because of health problems. In 1996, they re-obtained Indiana driver's licenses, registered their car, and registered to vote in Indiana. More facts supplied as necessary.

I. **Motor Vehicle Excise Tax: Imposition**

**DISCUSSION**

IC 9-13-2-78 defines “Indiana resident” as a person who is one of the following:

- (1) A person who has been living in Indiana for a least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:
  - (A) Attending an institution of higher education
  - (B) Serving on active duty in the armed forces of the United States.
- (2) A person who is living in Indiana if the person has no other legal residence.
- (3) A person who is registered to vote in Indiana.
- (4) A person who has a child enrolled in an elementary or secondary school located in Indiana.
- (5) A person who has more than one-half (1/2) of the person’s gross income derived from sources in Indiana... However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Also, IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department’s claim for the unpaid tax is valid. It is the burden of the taxpayer to prove that the proposed assessment is wrong. In support of their protest and to show they were Florida residents, the Taxpayers submitted documentary proof that they purchased, and registered the 1991 Cadillac in the State of Florida. Furthermore, the Taxpayers provided copies of documents showing they owned property, obtained driver’s licenses, registered to vote, and paid taxes in the State of Florida. They contend that they spend less than one hundred eighty-three (183) days a year in Indiana.

However, the Taxpayers received a homestead mortgage exemption. IC 6-1.1-20.9-1 defines “homestead” as an individual’s principal place of residence. Also, IC 6-1.1-20.9-3 (c) states:

If an individual who is receiving the credit provided by this chapter changes the use of his real property, so that part or all of that real property no longer qualifies for the homestead credit provided by this chapter, the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use within sixty (60) days after the date of that change.

The Taxpayer states that claiming the homestead mortgage credit was an oversight. Yet, the Taxpayers did not notify the auditor of the county of any changes and have not provided any documentation to support an attempt to correct this oversight.

Also, pursuant to IC 9-18-2-1(d): “An Indiana resident who has a legal residence in a state that is not contiguous to Indiana may operate a motor vehicle in Indiana for not more than sixty (60) days without registering the motor vehicle in Indiana.” The Taxpayers concede that they lived

on their Indiana property from approximately April to October for the years in question and contend they spent the remainder of time in Florida. They also argue that they traveled to Colorado for several weeks during the summer. However, the Taxpayers do not show that the automobile was in Indiana for less than 60 days. Therefore, the protest must be denied.

### **FINDING**

The Taxpayer's protest is respectfully denied.

## **II. Tax Administration – Penalty and Interest**

### **DISCUSSION**

IC 6-8.1-10-2.1(d) allows a penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Also, 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayers must show that they exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. The Department finds that the Taxpayers demonstrated reasonable cause for their failure to pay tax. However, IC 6-8.1-1-10-1 does not allow the Department to waive interest.

### **FINDING**

The Taxpayers' protest is sustained in part and denied in part. The Taxpayers' protest of the penalty is sustained. The Taxpayers' protest of interest is denied.